

Rose Ann Fleming
ROSE ANN FLEMING PROFESSIONAL CORPORATION
3855 Ledgewood Drive, Suite 13
Cincinnati, OH 45207
Phone: 513-924-8389
Fax: 513-924-8389
Email: Fleming@xavier.edu

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

OLLEN G. COLBERT, Jr.,

Plaintiff,

VS.

**CINERGY, AND THE CINCINNATI GAS
AND ELECTRIC COMPANY, et al.,**

Defendants.

Case No.: 1:00-cv-00909

Judge Susan J. Dlott
Magistrate Judge Timothy Hogan

**PLAINTIFF'S REPLY TO DEFENDANT
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 1347'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR EXTENSION
OF TIME FOR DISCOVERY**

Comes now Plaintiff, Ollen G. Colbert, Jr., by and through Counsel, and respectfully
replies to Defendant International Brotherhood of Electrical Workers Local 1347's .
Memorandum in Opposition to Plaintiff's Motion for Extension of Time for Discovery, as
follows:

1. The Record of this case indicates that Plaintiff did not complained of an extension of
time requested by Defendant Cinergy/The Cincinnati Gas and Electric Company when such
extension was needed by its Counsel. Specifically, the Record indicates an extension granted by
Plaintiff, either without opposition or by Agreed Entry, in July, 2004. Plaintiff should be granted
the same exception to extension-of time-requests as Defendant was granted.

2. Further, discovery is needed whether or not a deposition of Mr. Bricking is taken.
Defendants' Counsel indicates that he needs an extension of time for filing a dispositive motion
on behalf of the Union. To respond to such motion, Plaintiff needs discovery and will ask for it
then, if he does not receive it at present. In the interest of justice, therefore, Plaintiff respectfully
requests that this most current extension of time be granted.

3. Ineffective assistance of counsel is a worthy argument on appeal in reversing the outcome of a trial where a party can show prejudice in pursuing his case due to lack of discovery, and certainly the delay of Plaintiff's Counsel in seeking discovery in this matter appears to be ineffective assistance. Notwithstanding, Plaintiff deserves adequate discovery in the interest of justice, and the discovery items that Counsel has requested are critical to Plaintiff's case.

WHEREFORE, Plaintiff respectfully requests that the Court grant his Motion to Extend the discovery period until December 14, 2004 and to grant defendants whatever time they request for dispositive motions.

Dated this 20th day of November, 2004.

/s/ Rose Ann Fleming
Rose Ann Fleming
Bar Id. #0041337
ROSE ANN FLEMING, P.C.
3855 Ledgewood Drive,
Suite 13
Cincinnati, OH 45207
Phone: 513-924-8389
Fax: 513-924-8389
Email: Fleming@xavier.edu
Attorney for Plaintiff

CERTIFICATE OF ELECTRONIC SERVICE

I HEREBY CERTIFY that November 21, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ariane S. Johnson, Esq.
Attorney for Defendant Cinergy and The Cincinnati Gas and Electric Company
Cinergy Services Inc.
1000 East Main Street
Plainfield, IN 46168
and
Jerry A. Spicer, Esq.
Snyder, Rakay & Spicer
11 W. Monument Building
Suite 307
Dayton, OH 45402

and I HEREBY CERTIFY that I have mailed by United States Postal Service the document to the same parties.

/s/ Rose Ann Fleming
Rose Ann Fleming
Bar Id. #0041337
ROSE ANN FLEMING, P.C.
3855 Ledgewood Drive,
Suite 13
Cincinnati, OH 45207
Phone: 513-924-8389
Fax: 513-924-8389
Email: Fleming@xavier.edu
Attorney for Plaintiff